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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,654	04/14/2006	Hans Binder	4319.GLE.PT	2298
27472 7590 06/09/2010 BATEMAN IP LAW GROUP P.O. BOX 1319 SALT LAKE CITY, UT 84110			EXAMINER VAN TERPOOL, LESTER L	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 06/09/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/575,654

**Applicant(s)**

BINDER ET AL.

**Examiner**

LESTER L. VANTERPOOL

**Art Unit**

3782

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 34-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-39, 42-44, 46, 48 and 54 is/are rejected.
- 7) ☒ Claim(s) 40, 41, 45, 47 and 49-53 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date \_\_\_\_\_
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 26, 2010 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 34 – 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 34, line 5 recites: "an elongate longitudinal section" and lines 8 & 9 recite: "the curve section".

It is unclear if the elongate longitudinal section and the curve section are two separate structural elements or the same structural element.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 38, 39, 44 & 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Lumpe et al., (U.S. Patent Number 5893499).

Lumpe et al., discloses the rail (1) extending at a distance from the roof of a vehicle, the rail (1) having the elongate body and having exterior walls disposed along the length of the rail (1) and the end face (3) disposed across the elongate body, the end face (3) directed towards the roof of the vehicle;

the curve section (2) of the rail (1), the curve section (2) comprising the elongate longitudinal section of the rail (1) which is adjacent the end of the rail (1) and separate from the end face (3), the curve section (2) being defined by the exterior surface of the exterior walls of the rail (1); and

the support (50) attached to the curved section (2) of the rail (1) via the exterior walls and configured for attaching the rail (1) to the roof of a vehicle at a position apart from the end face (3) of the rail (1), the support (50) having the upper surface (52) which curved as to be complementary to the lower surface of the curved section (2) of the rail (1) (See Column 3, lines 53 – 57) (See Figures 1 – 5).

Regarding claim 39, Lumpe, et al., discloses the support (50) is generally flat on the bottom (51) and configured for attachment to roof of a vehicle (See Column 3, lines 49 – 57).

Regarding claim 44, Lumpe, et al., discloses the bottom of the curved portion (2) and the top of the support (50) have the curved shape in longitudinal cross-section (See Figures 1, 3 & 4).

Regarding claim 48, Lumpe, et al., discloses the rail (1) extending at a distance from the vehicle, wherein the rail (1) comprises the elongate body (See Figure 1) defined by exterior walls extending along the length thereof, the end face (3) extending across the end of the rail (1), the end face (3) being connected to the vehicle, and the elongate longitudinal section of the rail (1) disposed adjacent the end of the rail (1), the longitudinal section being curved such that the longitudinal section of the rail (1) curves toward the surface of the vehicle (See Figures 1, 3 & 4);

the support (50) disposed apart from the end of the rail (1) attached to the underside of the longitudinal curved section (2) of the rail (1) via the exterior surface of the exterior walls of the rail (1), the support (50) having the curved upper surface (52) which is complementary to the lower surface of the curved section (2) and the support (50) having the lower surface attached to the vehicle apart from the end face (3) (See Column 3, lines 53 – 57) (See Figures 1 – 5) (See Figures 1 – 5).

6. Claims 38, 39, 42, 44 & 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Mohr (German Patent Number DE 4422421 C1).

Mohr discloses the rail (1) extending at a distance from the roof of a vehicle, the rail (1) having the elongate body and having exterior walls disposed along the length of the rail (1) and the end face (See Figure 2) disposed across the elongate body, the end face (See Figure 2) directed towards the roof of the vehicle;

the curve section (2) of the rail (1), the curve section (2) comprising the elongate longitudinal section of the rail (1) which is adjacent the end of the rail (1) and separate from the end face (See Figure 2), the curve section (2) being defined by the exterior surface of the exterior walls of the rail (1); and

the support (16) attached to the curved section (2) of the rail (1) via the exterior walls and configured for attaching the rail (1) to the roof of a vehicle at a position apart from the end face (See Figure 2) of the rail (1), the support (16) having the upper surface (See Figure 2) which curved as to be complementary to the lower surface of the curved section (2) of the rail (1) (See Figures 1 & 2).

Regarding claim 39, Mohr discloses the support (16) is generally flat on the bottom (15) and configured for attachment to roof of a vehicle (See Figure 2).

Regarding claim 42, Mohr discloses the rail (1) is tubular so as to have the hollow interior (4), and wherein the roof rack comprises the projection (8) which is complementary in shape to the hollow interior (4) of the rail (1) in the hollow interior of

the tubular rail (1) so as to engage the interior surface of the rail exterior walls (See Figure 2).

Regarding claim 44, Mohr discloses the bottom of the curved portion (2) and the top of the support (16) have the curved shape in longitudinal cross – section (See Figure 2).

Regarding claim 46, Mohr discloses the mounting plate (20) located between the support ((16) and the roof of a vehicle, and wherein the end face of the rail (1) is disposed adjacent the mounting plate (20) (See Figure 2).

Regarding claim 48, Mohr discloses the rail (1) extending at a distance from the vehicle, wherein the rail (1) comprises the elongate body (See Figure 1) defined by exterior walls extending along the length thereof, the end face (See Figure 2) extending across the end of the rail (1), the end face (See Figure 2) being connected to the vehicle, and the elongate longitudinal section of the rail (1) disposed adjacent the end of the rail (1), the longitudinal section being curved such that the longitudinal section of the rail (1) curves toward the surface of the vehicle (See Figures 1 & 2);

the support (16) disposed apart from the end of the rail (1) attached to the underside of the longitudinal curved section (2) of the rail (1) via the exterior surface of the exterior walls of the rail (1), the support (16) having the curved upper surface (See Figure 2) which is complementary to the lower surface of the curved section (2) and the

support (16) having the lower surface attached to the vehicle apart from the end face (See Figures 1 & 2).

Regarding claim 54, Mohr discloses the rail (1) is formed by the single piece comprising the generally straight portion (i.e. See Left Side Portion of (1) in Figures 1 & 2) and the curved section (2).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mohr (German Patent Number DE 4422421 C1) in view of Stapleton (U.S. Patent Number 7204396 B1).

Mohr discloses the mounting plate (20) attached to the bottom of the support (16) (See Figure 2).

However, Mohr does not disclose the projection being disposed on the mounting plate.

Stapleton teaches the projection (66) on the mounting plate (26) (See Figure 2).



It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the projection disposed on the mounting plate as taught by Stapleton with the roof rack of Mohr in order to enhance reliable anchoring.

***Allowable Subject Matter***

9. Claim 34 – 37 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

10. Claims 40, 41, 45, 47, 49, 50, 51, 52 & 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

11. Applicant's arguments with respect to claims 34 - 54 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LESTER L. VANTERPOOL whose telephone number is (571)272-8028. The examiner can normally be reached on Monday - Friday (8:30 - 5:00) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. L. V./  
Examiner, Art Unit 3782

/Nathan J. Newhouse/  
Supervisory Patent Examiner, Art Unit 3782